IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2018

PRONOUNCED ON : 20.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15304 of 2008

C.S.Dillikumar .. Petitioner

vs

1.Poompuhar Shipping Corporation Ltd.,
Rep. by its Chairman & Managing Director,
692, Anna Salai, MHU Complex,
4th Floor, Nandanam,
Chennai 600 035.

2.The Appellate Authority cum Board of Directors,
Poombuhar Shipping Corporation Ltd.,
692, Anna Salai, MHU Complex,
4th Floor, Nandanam,
Chennai 600 035.

3.State of Tamil Nadu,
rep. By Secretary to Government,
Highways Department,
Fort St. George,
Chennai - 9.
(R3 impleaded as per order darted 07.07.2009
made in M.P.(MD) No.2 of 2008) .. Respondents

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Prayer : Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to theorder of the 1st respondent in proceedings No.PA/001/CSD/DA/07 dated 05.12.2007 as confirmed by the order of the 2nd respondent in proceedings No.PA/001/CSD/DA/07 dated 21.04.2008 and quash the same and consequently direct the respondents herein to treat the period of suspension from 14.03.1999 till 18.03.2004 as period spent on duty for all purposes with all consequential benefit.

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For petitioner : Mr.R.Parthiban

For respondents : Mr.T.S.Baskaran for R1
Mr.N.Inbanathan, AGP for R3
No Appearance for R2

ORDER

The petitioner was issued with the three show cause notices dated 30.10.1998, 10.05.1999 and 08.12.2006. After the issuance of the 1st show cause notice, the petitioner was placed under suspension on 10.03.1999. Thereafter, the 2nd show cause notice was issued.

2.In the 1st show cause notice, 2 charges were framed against the petitioner. In the 2nd show cause notice, 3 charges were framed against the petitioner.

3.During the interregnum, before the issuance of 3rd show cause notice dated 18.12.2008, the suspension was revoked with immediate effect as per the proceedings dated 18.03.2004 bearing reference PA/001/CSD(Sus-Rev./HO/04 with the following observation:

> "The ad-interim suspension from service ordered to Thiru.C.S.Dillikular, Asst. Manager (Accts) vide the orders at reference cited (I) above, is hereby revoked with immediate effect pending issue of final orders in the charges framed against him vide the show cause notices cited (ii) above dated 30.10.1998 and 10.05.1999."

4.The petitioner was under suspension between 10.03.1999 and 18.03.2004 and was given subsistence salary during the aforesaid period. However, the enquiry report dated 27.11.2003 which formed the basis for revocation and exonerating the petitioner of all five charges in the 1st and 2nd show cause notice was not furnished to the petitioner.

5.The 3rd show cause notice which was issued 12-1/2 years after the alleged misconduct incorporated all the 5 charges once again from the 1st and the 2nd show cause notice and an additional charge (6th charge) in it.

6.The respondent found the petitioner guilty of the 6th charge and ordered punishment vide impugned order dated 14.08.2007 bearing reference No.PA/001/CSD/DA.06 which was impugned in W.P.No.37592 of 2007.

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7.By a separate order that was pronounced today (20.11.2018) in W.P.No.37592 of 2007, the punishment awarded on the petitioner vide impugned order dated 14.08.2007 bearing reference No.PA/001/CSD/DA.06 in the above writ petition has been set aside.

8.By memorandum dated 15.11.2007, bearing reference PA/001/CSD/DA/07, the 1st respondent as the disciplinary authority proposed to treat the period of suspension undergone by the petitioner between 10.03.1999 and 18.03.2004 as non duty period and therefore called upon the petitioner to show cause as to why action should not be taken under clause 4.6.(1)(b) read with 4.6.(2) of Service Rules of the Corporation.

9.The petitioner, by his reply dated 29.11.2007 gave his rebuttal to all the aforesaid memorandum. Specifically it was submitted that he was placed under suspension for the charges framed in the first show cause notices and therefore the period of suspension undergone cannot be treated as non duty period for the purpose of clause 4.6.1 and 4.6.2 of the Service Rules of the Corporation in view of revocation of suspension.

10.By the impugned order dated 05.12.2007, bearing reference PA/001/CSD/DA.07, the 1st respondent as disciplinary authority held that the period during the suspension has to be treated period not in service and therefore the subsistence allowance already paid during the period of suspension will be treated as pay, allowances and other entitlements for the suspension period. In other words, all the benefits available as a regular was sought to be denied to the petitioner.

11.The 1st respondent vide order dated 05.12.2007 has concluded as follows:

> "As the Disciplinary Authority vide Memorandum dated 14.08.07 has imposed punishment of stoppage of an annual increment with cumulative effect for a period of six months which relates to the transactions that took place during 1994-1998, you were not honourably acquitted and the Disciplinary Authority after satisfying that the suspension was wholly justified hereby orders to treat the period of suspension as non-duty under clause 4.6.2 of the Service Rules of the Corporation. As regards the quantum, the Subsistence Allowances already paid by the Corporation during the period of suspension will be treated as pay, allowances and other entitlements for the suspension period.
>
> In this connection clause 4.6 of Service Rules of the Corporation is reproduced below:

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"4.6.1.When the suspension on an employee is held to be unjustified or not wholly justified or when an employee who has been dismissed or suspended is reinstated the disciplinary, appellate, or reviewing authority, as the case may be, whose decision shall be final, may grant to him for the period of his absence from duty:

(a) If he is honourably acquitted, the full pay and allowances which he would have been entitled to if he had not been dismissed or suspended, less the subsistence allowance.

(b) If otherwise such proportion of pay and allowance as the disciplinary, appellate or reviewing authority may prescribe.

4.6.2. In a case falling under clause (a) the period of absence from duty will be treated as a period spent on duty. In a case falling under clause (b) it will not be treated as a period spent on duty unless the disciplinary, appellate o reviewing authority as the case may whose decision shall be final, so direct."

As per clause 4.7 of PSC Service Rules of the Corporation Appeal against this order lies with the Appellate Authority i.e. The Board of Directors of the Poompuhar Shipping Corporation Limited within a period of two months (clause 4.8) from the date of receipt of this order.

sd/-Dipak Jain

Chairman and Managing Director"

12.Aggrieved by the orders of the 1st respondent the petitioner preferred an appeal before the 2nd respondent Appellate Authority. By the impugned order dated 21.04.2008 bearing reference PA/001/CSD/DA/08, the 2nd respondent (of which the 1st respondent was a Member) upheld the order of the 1st respondent. The operative portion of the order dated 21.04.2008 reads as under:

"The Board i.e. The Appellate Authority at its 271st meeting held on 18.03.2008 vide Item No.20 have discussed on the appeal made by Thiru.C.S.Dillikmar, Asst. Manager (Accts). The Board i.e. The Appellate Authority viewed as follows:

(i)suspension is fully justified considering the nature of misconduct.

(ii)the appellant is not honourably acquitted as he has been awarded punishment and

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(iii)the Service Rules of the Corporation provides for treating the period of absence from duties as a period spent on duty if the appellant is honourably acquitted only.

In the circumstances, the Board i.e. The Appellate Authority unanimously resolved to treat the suspension period as non-duty period and further resolved that the subsistence allowances already paid by the corporation to appellant will be treated as pay and allowances and other entitlements for the suspension period as per clauses 4.6.2(b) of the Service Rules of the corporation.

Appeal against the order lies before the Reviewing Authority i.e. The Government within 60 days of receipt of this order."

sd/-Dipak Jain

Chairman and Managing Director"

13.Aggrieved by the order of the 2nd respondent Appellate Authority herein, the petitioner had filed a review petition on 14.05.2008 before the reviewing authority viz., the Secretary to the Government of Tamil Nadu, Highways Department, Chennai. However, no orders have been passed.

14.The petitioner has therefore preferred the present writ petition before this Court and has assailed the punishment imposed on him by the 1st respondent vide order dated 05.12.2007 as affirmed by the 2nd respondent Appellate Authority in the impugned order dated 21.04.2008.

15.The respondents have filed counter and have submitted that the orders passed by the respondents are as per the Service Rules of the Corporation and therefore the same cannot be questioned. The respondents have justified the action on the ground that the petitioner was not "honourably acquitted" and therefore, the order passed by the respondents are sustainable.In view of the above submission it was therefore prayed for dismissal of the above writ petition.

16.Heard Mr.R.Parthiban, learned counsel appearing for the petitioner and Mr.T.S.Baskaran, learned counsel appearing for the respondents.

17.The learned counsel for the petitioner relied on the following decisions:

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(i) Krishan Lal Vs. Food Corporation of India and Others 2012 (4) SCC 786,

(ii)M.Saravanan Vs. The District Prohibition Officer, etc., Dharmapuri & another 2007 WLR 490,

(iii)Ajay Kumar Choudhary Vs. Union of India (UoI) and Others 2015 (3) CTC 119,

(iv)Hira Lal Vs. D.D.A. and others 1995 LIC 2196 Del,

(v)Union of India and Others Vs. S.K.Kapoor (2011) 4 SCC 589,

(vi)S.N.Narula Vs. Union of India and Others (2011) 4 SCC 591,

(vii)Kaushalya Devi Massand Vs. Roopkishore Khore (2011) 4 SCC 593,

(viii)Union of India and Others Vs. R.P.Singh (2014) 7 SCC 340,

(ix)Deputy Inspector General of Police and Another Vs. S.Samuthiram(2013) 1 SCC 598,

(x)M/s.Kesoram Cotton Mills Ltd., Vs. Gangadhar and Others AIR 1964 SC 708,

(xi)State of Uttar Pradesh and Others Vs. Saroj Kumar Sinha (2010) 2 SCC 772,

(xii)Kuldeep Singh Vs. Commissioner of Police and Others (1999) 2 SCC 10,

(xiii)S.Subbiah Pandian Vs. Superintendent of Police, Tirunelveli Distirct (2008) 7 MLJ 610,

(xiv)M.Murugesan Chettiar Vs. EE, (O & M), CEDC/TNEB (2010) 2 MLJ 225,

(xv)A.Lakshmanan Vs. State of Tamil Nadu and others 2010 (1) CTC 159,

(xvi)V.Karuppan Vs. The Tamil Nadu Industrial Investment Corporation Ltd., and others 2010 (1) CTC 163,

(xvii)N.Nandagopalan Vs. The Secretary to Government 2007 WLR 52,

(xviii)V.Ramasamy Vs. The Secretary, Government of Tamil Nadu and another in W.P.No.8699 of 2006.

18.The learned counsel for the respondent relied on the decision of Hon'ble Supreme Court in Nivedita Sharma Vs. Cellular Operators Association of India and others (2011) 14 SCC 337 wherein it was reaffirmed as follows:-

> "It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] and other similar

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judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field."

19.The respondents were directed to furnish a copy of enquiry report dated 27.11.2013 in respect of the first show cause notice. They were filed before this Court by the learned counsel appearing for the respondents.

20.I have gone through the facts of the case and the case laws submitted by the learned counsel for the petitioner and the respondents. I have also considered the rival arguments advanced by the respective counsels. At the out set I may add that the presence of an alternative remedy is not a bar. In Kuldeep Singh Vs. Commissioner of Police - (1999) 2 Supreme Court Cases 10, the Hon'ble Supreme Court has held as follows:

"A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse, But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be the conclusions would not be treated as perverse and the findings would not be interfered with."

21.Further, the Hon'ble Supreme Court in M/s.Kesoram Cotton Mills Ltd. V. Gangadhar - (1964) 2 CR 809 held that ordinarily, the law is that a workman may be suspended pending enquiry and disciplinary action. If after the enquiry the misconduct is proved the workman is dismissed and is not entitled to any wages for the suspension period; but if the inquiry results' in the reinstatement of the workman he is entitled to full wages for the suspension period also along with reinstatement, unless the employer instead of dismissing the employee can give him a lesser punishment by way of withholding of part of the wages for the suspension period. Further, it was held that that if a workman is fully exonerated after the inquiry, he would remain in the service of the employer and would be entitled to his full wages during the period of his suspension also.

22.Even on facts, the respondents could have invoked clause 4.6.(1)(b) read with 4.6.(2) of the Service Rule of the Corporation only if the Petitioner was not exonerated in the disciplinary proceeding in the 1st and the 2nd SCN. Even there such proceedings should have been invoked within a reasonable time. There was enormous delay in initiating the

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3rd show cause notice proceeding after 12-1/2 years.

23.In State of Madhya Pradesh V. Bani Singh and another - 1990(Supp) SCC 378, the Hon'ble Supreme Court has held that the delay in issuing the charge memo will be unfair to permit the departmental enquiry to be proceeded with.

24.In State of Punjab and Ors V. Chaman Lal Goyal - 1995 (2) SCC 579, the Hon'ble Supreme Court has held that it is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances.

25.It is noticed that 1st show cause notice was issued on 30.10.1998 and thereafter, the petitioner was placed under suspension on 10.03.1999 followed by the 2nd show cause notice dated 10.05.1999. By two separate enquiry reports both dated 27.11.2003, all the 5 charges were not held proved against the petitioner. Therefore, the disciplinary proceedings ought to have been terminated.

26.As the order dated 14.08.2007 reference PA 001/CSD/DA/06 impugned in W.P.No.37592 of 2007 has been set aside, therefore, the two impugned orders dated 05.12.2007 and 21.04.2008 of the 1st and the 2nd respondent are not sustainable as the punishment has been set aside.

27.It is further noticed that the 1st respondent as the disciplinary authority not only issued the show cause notice dated 15.11.2007 but was also passed the impugned orders both as a disciplinary authority and also as the Appellate Authority. Thus, on this score also there is a patent bias in not only initiating fresh proceeding also in awarding and upholding punishment in the impugned orders by the 1st respondent.

28.In view of the above observation, the present writ petition stands allowed with consequential relief.

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29.The respondents shall calculate the arrears together with interest at the applicable rates as was in force during the period commencement from 10.03.1999. No costs.

Sd/-/-
Assistant Registrar(CS)

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Sub Assistant Registrar

Arul

To

1.Poompuhar Shipping Corporation Ltd.,
Rep. by its Chairman & Managing Director,
692, Anna Salai, MHU Complex,
4th Floor, Nandanam,
Chennai 600 035.

2.The Appellate Authority cum Board of Directors,
Poombuhar Shipping Corporation Ltd.,
692, Anna Salai, MHU Complex,
4th Floor, Nandanam,
Chennai 600 035.

3.State of Tamil Nadu,
rep. By Secretary to Government,
Highways Department,
Fort St. George,
Chennai - 9.

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+1cc to Mr.R.Parthiban , Advocate SR.No. 79326
+1cc to Mr. T.S.Baskaran, Advocate SR.No. 78904

W.P.No.15304 of 2008

ASK(14/12/2018)

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